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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969
NO. 1524

HALSEY L. WILLIAMS,

Petitioner,

vs.

BURDICK F. WILLIAMS,

Respondent.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI

HALSEY L. WILLIAMS
458 South Spring Street
Suite 827
Los Angeles, California 90013
MAdison 8-1443
Petitioner in Pro Per

AKELEY P. QUIRK and
MILO V. OLSON
612 South Flower Street
Los Angeles, California
MAdison 8-7238
Attorneys for Respondent.

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COMMENTS

To begin with, this petitioner wishes to comment on the tone of the "Response to The Petition For Writ of Certiorari" signed by Milo V. Olson, Attorney for Respondent. As has been his custom during the course of this litigation, Milo V. Olson has

mentioned that the petitioner is appearing in "propria persona". This reference is always couched in a slurring tone as in this instance. This petitioner suggests that his opening remark is more in violation of Section 5 of Rule 40 of the Rules of the Supreme Court of the United States than it is succinctly stated. (Paragraph 1, Page 1, of Response To The Petition for Writ of Certiorari.)

I

DECISION ON FIRST APPEAL
255 Cal App 2d 648 DECIDED
ONLY PLAINTIFF'S ABSOLUTE
RIGHT TO PARTITION THE
COMMON REAL ESTATE INVOLVED.

1. The Respondent has contended that the decision in Williams v. Williams, 255 Cal App 2d 648 is controlling over the issues raised by this petitioner. For

the purpose of dispelling any controversy that said decision has any importance in determining the issues raised on the petition for writ of certiorari, the headnotes to the decision reported in 255 Cal App 2d 648 are set forth below:

"[1] Judgments - Summary Judgments - When Judgment Permitted. - A summary judgment is proper only if the affidavits in support of the moving party are sufficient, strictly construed, to sustain a judgment in his favor and the affidavits filed by the opponent, liberally construed, do not show facts deemed by the judge hearing the motion sufficient to present a triable issue."

"[2] Id. - Summary Judgments. - The aim of the summary judgment procedure is to discover, through the media of affidavits, whether the parties possess evidence requiring the weighing procedures of a trial."

"[3] Partition - Agreements Against Partition. - Although it is generally conceded that a cotenant is entitled to partition as a matter of absolute right, and that he need not assign any reason for his demand; that it is sufficient if he demands a severance; and that when grounds for a sale are duly established it may be demanded as of right, such right of a cotenant to partition property

may be modified or waived by reason of an agreement, express or implied, between him and his cotenant permitting a variance from the ordinary incidence of such cotenancy."

"[4] Id. - Judgment. - Where, in an action for partition, plaintiff moved for a summary judgment, and defendant presented no facts by way of counter-declaration giving rise to a triable issue or defense, and there was nothing in his declaration or correspondence attached thereto as exhibits that established anything by way of estoppel or waiver, by agreement express or implied, affecting plaintiff's right to partition in kind, the trial court had no alternative

but to grant the motion and enter its decree."

2. It is clear from the footnotes that 255 Cal App 2d 648 announced only

(a) the applicable California law on summary judgment as to the instant case; and

(b) as to the defense of the appellant-defendant in that case (the petitioner herein) the Court said "There is nothing in his declaration or the correspondence attached thereto that established anything by way of estoppel or waiver, by agreement express or implied, affecting plaintiff's right to partition in kind. Thus in light of the foregoing, the trial court on the

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[1] See Cal. Jr. 2d. Judgments, §41; Am. Jur., Pleading (1st ed §340, et seq.) McK. Dig. References; [1] Judgments, §8a(1); [3] Partition, §2; [4] Partition, §56.

motion for summary judgment had no alternative but to grant the motion and enter its decree." (Emphasis added 255 Cal App 2d 648, 652 [4].)

Therefore, the opinion in 255 Cal App 2d 648 goes solely to the right of the plaintiff-respondent therein (respondent herein) to partition of the common real estate but the second appeal instituted by the defendant-appellant (petitioner herein) to the Court of Appeal of California, in his briefs solely attacked the administration of the "Interlocutory Decree In Partition Action (Summary Judgment pursuant to C.C.P. §437(c).)" (1st Clerk's Transcript page 39). The objections to the administration were enumerated in the partition for writ of certiorari and in no way could be construed to attack the right to partition held by Respondent, Burdick F. Williams.

II

THE PARTITION BY THE REFEREES

(2d Clerk's Transcript, p. 19)

1. The referees had to make a physical partition of the real estate involved which necessarily required a division of the one-story building in order to come as close as possible to the requirements of Section §764 of the California Code of Civil Procedure, which reads:

"§764. Method of Partition, Division and Allotment. - In making partition, the referees must divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper

III

WINDFALLS, AS DESCRIBED BY THE APPELLATE COURT DECISION ON THE SECOND APPEAL, HAS NO PLACE LEGALLY IN PARTITION SUITS.
(Appendix III, page 4 and Note 1 pages 5 and 6).

Assuming that there was a windfall of $55,000 going to the recipient of Parcel "B", it would be entirely in violation of Section 764 of the California Code of Civil Procedure, which provides that the parcels be divided "... quality and quantity relatively considered". To have had a legitimate choice, the offer should have been made either Parcel "B" or Parcel "A" plus $55,000. This petitioner could have chosen Parcel "A". To have a choice the parcels must be equal in value, including the owelty.

IV

PLAINTIFF IN THE PARTITION ACTION (RESPONDENT HEREIN) CAUSED THE SUPPRESSION IN RENTALS FROM PARCEL "A".

1. By letter dated May 13, 1966 (1st Clerk's Transcript, p. 33) plaintiff, in the partition suit, summarily called off negotations with the Bank of America, tenant in Parcel "A", on a renewal lease for 15 years at an increas of $1,000 a month. The letter, in the first paragraph, acknowledges receipt of a letter from Mr. H. O. Miller which contained changes which were the "straw that broke the camel's back". Mr. H. O. Miller (not H. C. Miller) letter dated May 11, 1966 (1st Clerk's Transcript p. 31), contains additions to the lease (not changes) that were beneficial to petitioner and petitioner's cotenant, or, as to addition #3, an absolute

right of petitioner to direct where his one-half of the rental should be sent.

2. After officials of the Bank of America had met with plaintiff in partition suit in an attempt to persuade him to reopen negotiations with the Bank of America on the renewal lease, plaintiff wrote his letter of August 9, 1966 (1st Clerk's Transcript, p. 36) rebuking Mr. William R. George, leasing agent for the Bank of America, for writing a letter saying that the Bank of America would hold in abyeance any further negotiations on renewal lease until both owners agreed to terms and conditions upon which they will make this space available to Bank of America. In the second paragraph of that letter, B. F. Williams states that on December 15, 1965, he signed the lease drawn up

by the Bank of America's leasing agent. No. attempt was made by this petitioner to change the terms and conditions which B. F. Williams agreed to by signing the lease prepared by the Bank's leasing agent.

3. Thus, the respondent in the Supreme Court of the United States, Burdick F. Williams, called off the negotiations on said renewal lease and has continued to refuse to reopen negotiations to this very day.

4. That there was a serious negotiation going on between the petitioner and the officers and representatives of the Bank of America was recorded in the letters attached to the Declaration of Halsey L. Williams, in Opposition to Plaintiff's Motion for Summary Judgment. (1st Clerk's Transcript, pp. 20 through 36.)

V

CONDUCT OF PLAINTIFF IN PARTITION ACTION VERY POOR MANAGEMENT OF REAL ESTATE

1. Attorney for plaintiff in partition suit announces at the slightest occasion that partition was necessary for the management of the property. Let us test his claim.

2. At the time that negotiations conducted by the petitioner reached a point where there was an "inflation clause" which the representatives of the Bank of America were ready to forward to San Francisco for "formal authority", (Exhibit 'C' 1st Transcript p. 30) plaintiff in partition suit called off all negotiations on May 13, 1966 and then a month later "filed his complaint for partition of real property".

3. An alternative could have been to reopen negotiations and wait and see what the Head Office in San Francisco decided, a decision that would have been made in two months at the longest.

4. If the decision were against inclusion of the "inflation clause", plaintiff would still have his right to partition.

5. If the decision were for the inclusion of inflation clause, plaintiff would still have his right to partition.

6. In either possibility, acceptance ordenial of the inflation clause, this petitioner would have no defense to urge.

VI

CLEAN HANDS

1. This petitioner has never

been able to see the conduct of the plaintiff in partition as management but only as inequitableness and bad faith in the relationship of cotenant (1st Clerk's Transcript, p. 27 - Exhibit E(1).) In the handwritten note initialed "B.F.W." "Don't crow to soon, the big boys in S. F. have not approved this clause, B.F.W." It looks to me like B.F.W. would rather have a negative answer, no approval of the inflation clause.

Exhibit E(2) (1st Clerk's Transcript, Page 28) is further evidence of bad faith. The handwriting of B.F.W. is on the back of H.L.W.'s letter of April 28, 1966 (1st Clerk's Transcript, Page 27).

2. This petitioner, here, respectfully presents a pronouncement from the

Supreme Court of the United States on the equitable maxim of "clean hands".

Precision Instrument Mfg. Co. v. Automotive M.M.Co. (1945) 324 U. S. 806, 814, 65 S. Ct. 995,997.

"1381: This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. The doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal to be 'the abetter of iniquity.'"

"The defense has been considered in the reviewing court even though not pleaded, but the better and safer practice is to raise it below. (See Katz v. Karlsson (1948) 84 C.A. 2d 469, 473, 191 P. 2d 541 [invoked by appellate court on grounds of public policy]; Scannell v. Murphy, (1947) 82 C. A. 2d 844, 849, 187 P. 2d 790 [should be raised in trial court]; Svistunoff v. Svistunoff (1949) 92 C. A. 2d 651, 654, 211 P. 2d 352 [same]; 2 Cal. Proc., Pleading, §551.)

CONCLUSION

It is respectfully pointed out to this Honored Supreme Court of the United States that counsel for the respondent was silent as to the contents and argument in the section headed by the title

"A Direct and Concise Argument Amplifying the Reasons Relied On For Allowance Of The Writ)page 15 Partition for Writ of Certiorari) and has relied on an Opinion, (255 Cal App 648) which has been demonstrated to have no bearing on the petition for Writ of Certiorari and a contention that violates the admonition of Section 764 of the California Code of Civil Procedure, viz: that parcels alloted by reference must be "quality and quantity relatively considered --" (emphasis by petitioner).

For the reasons just enumerated in this paragraph and for the reasons set forth above, as well as those contained in the Petition for Writ of Certiorari, petitioner prays that this

Honored Court grant a rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted

HALSEY L. WILLIAMS,

Petitioner in Pro Per.

CERTIFICATE OF PETITIONER IN PROPRIA PERSONA

As petitioner in propria persona, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

Halsey L. Williams,
Petitioner in Propria Persona

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 102 South Oxford Avenue, Los Angeles, California 90004. That on July 9, 1970 I served the within Petition For Rehearing on Petition For Writ of Certiorari on the respondent in said action or proceeding by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a mail-box at the United States Postoffice, Sixth and Harvard Boulevard, Los Angeles, California, addressed to the attorneys

for said respondent at the office address of said attorneys as follows:

MILO V. OLSON
AKELEY P. QUIRK
Attorneys at Law
612 South Flower Street
Los Angeles, California

and to

County Clerk
Los Angeles County
County Courthouse
111 North Hill Street
Los Angeles,California 90012

(For the Honorable
Robert W. Kenny,Judge)

and to
the Referees

Donald C. Kimber
Attorney at Law
639 South Spring Street
Los Angeles, California

Halleck W. Hoag
% Donald C. Kimber
Attorney at Law
639 South Spring Street
Los Angeles, California

James L. Barrett
% Donald C. Kimber
Attorney at Law
639 South Spring Street
Los Angeles, California

and to

Clerk of the Court of Appeal
Second Appellate District
State Building
217 West First Street
Los Angeles, California

Marie Luetcke

Subscribed and sworn
to before me this 9th
day of July, 1970.

Notary Public in and for said
County and State.